

2. FLOODPLAINS AND WETLANDS

2.1 Introduction

Floodplains are lowland and relatively flat areas adjoining inland and coastal waters, including, at a minimum, those areas subject to floods which have a one percent or greater chance of being exceeded in any given year (also known as 100-year floods). Floodplains fell under Federal protection (see *Unified National Program for Floodplain Management*) through Public Law 90-448 in 1968. This law was enacted in response to the magnitude of and continued increase in the nation's losses and property damage due to flooding despite widespread investment in Federal flood control projects. President Jimmy Carter issued Executive Order 11988 to Federal agencies in 1977 to reinforce the need to (1) strengthen Federal policies to reduce the risk of flood losses; (2) minimize the impact of floods on human safety, health, and welfare; and (3) restore and preserve natural floodplain values. Floodplains have important ecological values that need to be maintained. The fertile nature of floodplains makes them important wildlife habitats. In coastal areas, floodplains are often particularly fragile dune environments, which form an essential part of the shoreline's natural buffer zone. If disturbed, their effectiveness as storm barriers can be reduced significantly.

A wetland is an area meeting the three following conditions (U.S. Army Corps of Engineers, 1987):

- (1) Inundated or saturated soil conditions resulting from permanent or periodic inundation by groundwater or surface water (hydric soil).
- (2) A prevalence of vegetation typically adapted for life in inundated or saturated soil conditions (hydrophytic vegetation).
- (3) The indication of a wetland hydrology (e.g., by drainage pattern, drift lines, sediment deposition, watermarks, stream gauge data, historic records, visual observation of inundation).

Floodplains may also serve as groundwater recharge areas.

Wetlands are (also see text box) those areas that are inundated by surface or groundwater with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Wetlands fell under Federal protection through Executive Order 11990 issued by President Jimmy Carter and § 404 of the Clean Water Act. Since the inventories of the 1950s, over 40 percent of the 120 million acres of wetlands then inventoried have been lost. Loss of wetlands is due primarily to development and human land-use practices. Wetlands need to be protected because they serve a variety of important environmental functions like those of floodplains.

Floodplains and wetlands are commonly treated together for a number of reasons. Floodplains and wetlands may physically overlap. The losses associated with both floodplains and wetlands may be the result of the same general causes. The controls for the protection of floodplains and wetlands are similar -- restrictions on land use, development, and improvement.

2.2 Drivers for the Requirements

The two primary mandates that drive the floodplain/wetland requirements for real property transfers are Executive Order (E.O.) 11988, "Floodplain Management," and E.O. 11990, "Protection of Wetlands." In both E.O.s, § 1 dictates that each Federal agency shall take action to minimize loss and to preserve the natural and beneficial values of floodplains or wetlands in carrying out its responsibility for acquiring, managing, and disposing of Federal lands and facilities.

2. Floodplains and Wetlands

Section 3(d) of E.O. 11988 and § 4 of E.O. 11990 direct that when Federal property in a floodplain or wetland is proposed for lease, easement, right-of-way, or disposal to a non-Federal party, the Federal agency shall:

- (1) Reference in the conveyance (e.g., lease or property deed) those uses that are restricted,
- (2) Attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law, or
- (3) Withhold such properties from conveyance.

These two Executive Orders provide the authority for GSA and DOE to issue their own regulations implementing requirements regarding floodplains and wetlands in real property transfers. The GSA regulation is at 41 CFR 101-47.202-2(b)(6) and DOE regulations are at 10 CFR Part 1022.

2.3 Requirements in Real Property Transfers

The GSA regulation at 41 CFR 101-47.202-2(b)(6) requires that detailed information regarding flood hazards or flooding, location on a floodplain or wetland, and restricted uses be listed in an attachment to Standard Form 118 (see Appendix A) filed for the real property proposed for transfer.

The DOE regulations at 10 CFR Part 1022 are much more rigorous. First, you must make a determination of whether floodplains or wetlands are present on the property (see § 2.4.1 below). If floodplains or wetlands are present, then assess the effects of the real property transfer on floodplains and wetlands (see § 2.4.2 below). Prepare the assessment and include it in the environmental assessment (EA) or environmental impact statement (EIS), if either document is required in compliance with NEPA (see Chapter 13). In those instances where a real property transfer does not require an EA or EIS, DOE has established alternative floodplain/wetlands evaluation procedures involving analogous public notice and public comment/review (see § 2.4.3 below). Note that EH-

42 is reviewing 10 CFR Part 1022 at this time to determine if an update of the 1979 regulations is needed.

2.4 Implementation of the Requirements

Exhibit 2-1 is a flow chart depicting the general procedures for implementing the floodplain/wetland requirements for real property transfers.

2.4.1 Floodplain/Wetland Determinations

Information about whether a property contains a floodplain or wetland may already appear in the *Technical Site Information* or the *Site Comprehensive Land Use Plan*. Otherwise, there are several ways to determine whether a property contains or lies within any floodplain or wetland. Make a floodplain determination by ascertaining whether the property is located in the 100-year floodplain or critical action floodplain [an area for which even a slight chance of flooding would be too great (e.g., an area used for storing hazardous materials)] using a:

- Flood Insurance Rate Map (FIRM) or
- Flood Hazard Boundary Map (FHBM).

FIRMs and FHBMs are prepared by and available from the Federal Insurance Administration of the Federal Emergency Management Agency. In the event FIRMs or FHBMs are not available, seek assistance from the aforementioned agency or the Corps of Engineers.

Make a wetland determination by ascertaining whether the property contains a wetland by using the following:

- U.S. Fish and Wildlife Service National Wetlands Inventory Map,
- U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Map,
- U.S. Geological Survey Topographic Map,

Exhibit 2-1

Procedures for Floodplain/Wetland Review

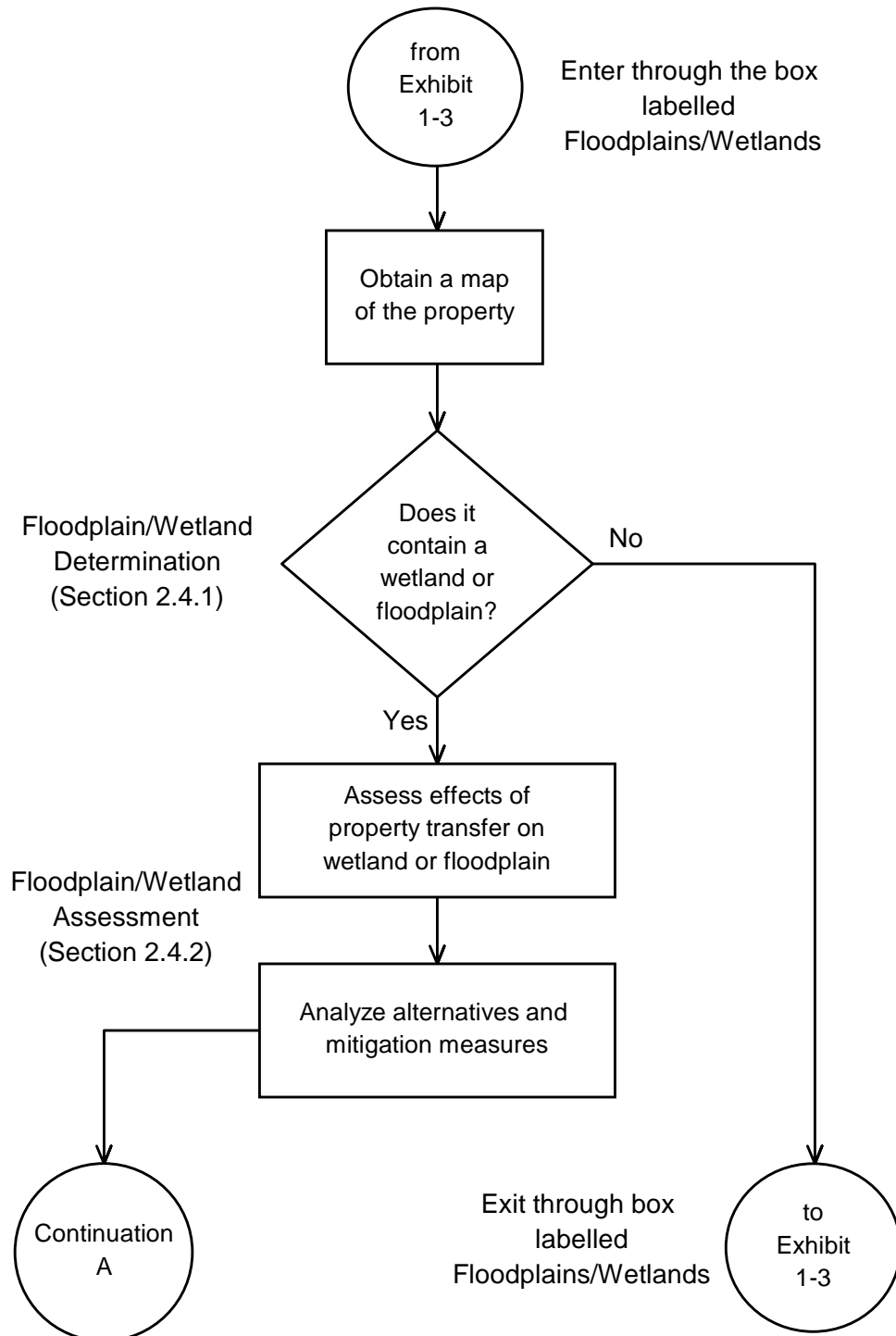
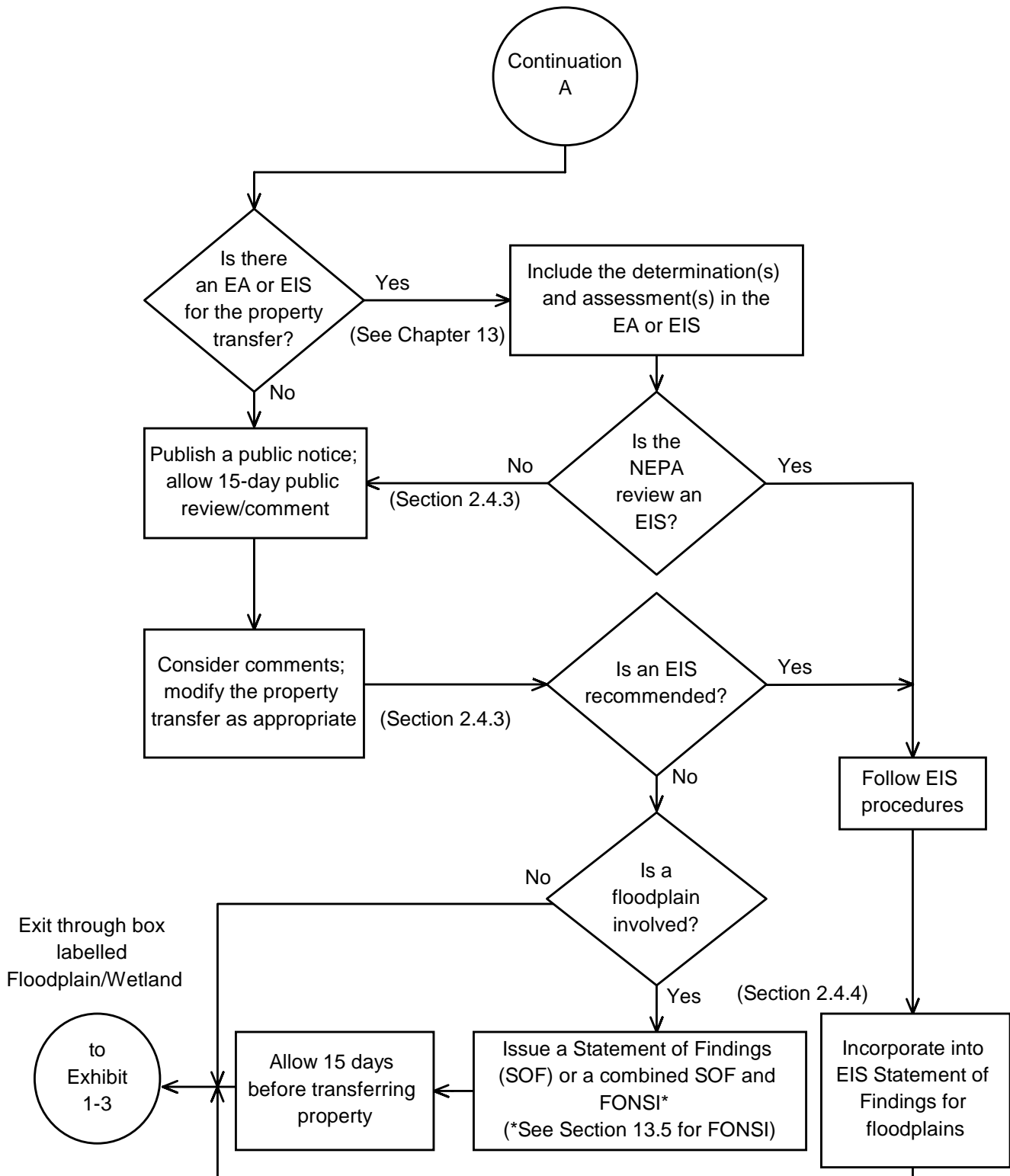


Exhibit 2-1 **Procedures for Floodplain/Wetland Review** **(Continuation A)**



- U.S. Army Corps of Engineers Wetland Delineation, Manual (see *U.S. Army Corps of Engineers*, 1987),
- State wetlands inventory, or
- Regional or local government-sponsored wetland or land use inventory.

2.4.2 Floodplain/Wetland Assessments

Pursuant to 10 CFR 1022.12, include in floodplain/wetland assessments (see Exhibit 2-1) the following information:

- (1) Description of the real property transfer -- discuss the nature and purpose of the real property transfer. Include in the description a map showing the location of the property with respect to the floodplain/wetland. For properties in a floodplain, delineate the high hazard areas and describe the nature and extent of the hazard.
- (2) Floodplain/wetland effects -- discuss the positive and negative, direct and indirect, and long-term and short-term effects of the real property transfer on floodplains/wetlands.
- (3) Alternatives -- consider and analyze alternatives, such as not transferring the property or transferring only parts of the property, to avoid adverse effects on floodplains/wetlands. Address measures that mitigate an adverse effect, such as restrictions on developments and improvements.

2.4.3 Public Notice and Public Involvement

The DOE regulations (10 CFR 1022.14) require a public notice (see Exhibit 2-1, Continuation A) and a public comment/review period for the effect of the real property transfer on floodplains/wetlands (when an EIS is required, a Notice of Intent to prepare an EIS may be used to satisfy the public notice requirement, provided that it also includes a Notice of Floodplain or Wetland action.) Publish the public notice in the Federal Register and

disseminate the notice to other Federal, State, and local agencies as well as persons or groups interested or affected by the real property transfer. Describe in the public notice the proposed action (i.e., the real property transfer, and the location). Allow a public comment/review period of 15 days following the public notice. At the close of the public comment/review period, re-evaluate all alternatives and mitigating measures, and take into account all substantive comments received. Prior to taking any action, evaluate mitigation measures to minimize potential harm to the floodplain/wetland. For real property transfers involving wetlands only, allow 15 days after publishing the public notice before implementing the real property transfer if wetlands constitute the only requirement to be satisfied [see 10 CFR 1022.18(b)].

2.4.4 Statement of Findings (floodplains only)

After the public comment/review period, publish a Statement of Findings for real property transfers involving a floodplain (see Exhibit 2-1, Continuation A). (No such Statement of Findings is required for real property transfers involving wetlands.) For floodplain actions which require preparation of an EA or EIS, the Statement of Findings should be incorporated into the NEPA document. Where no EA or EIS is required, publish the Statement of Findings in the Federal Register and allow at least 15 days before implementing the real property transfer (see 10 CFR 1022.18). The Statement of Findings (three-page maximum) must contain all of the following (10 CFR 1022.15):

- (1) A description of the real property transfer and a location map,
- (2) An explanation of why the floodplain must be included in the real property transfer,
- (3) A list of alternatives considered,
- (4) A statement indicating whether the real property transfer conforms to applicable State and local floodplain protection standards, and

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- (5) A brief description of the steps to be taken to minimize harm to or within the floodplain.

2.4.5 Approvals

The *Secretarial Policy on NEPA* of June 1994 provides for the delegation of authority within DOE for the approval of floodplain/wetland determinations and assessments, public notices of floodplain/wetland involvement, and Statement of Findings (floodplains only). Attachment I to the *Secretarial Policy* lists the Heads of Field Organizations who are fully authorized to grant such approvals. Under certain conditions, these persons may redelegate these approval authorities to Heads of subsidiary Field Organizations. For proposed actions that are categorically excluded from NEPA documentation requirements, NEPA Compliance Officers are authorized to approve and issue any required associated floodplain and wetland documents (DOE Order 451.1, §5 (d)(2))

2.4.6 Model Documents

The Office of NEPA Policy and Assistance developed model documents for the public notice of the following: (1) involvement of either a floodplain, a wetland, or a floodplain and a wetland; and (2) a Floodplain Statement of Findings. These model documents are contained in Appendix B.

2.5 Relationship to Environmental Baseline Survey

Make sure that information gathered about floodplains or wetlands on a facility also appears in an environmental baseline survey (see Chapter 12). Be aware that the American Standard for Testing and Materials (ASTM) E-1528-93 Standard, "Standard Practice for Environmental Site Assessments: Transaction Screen Process" and ASTM E-1527-94 Standard, "Standard Practice for Environmental Site Assessments: Phase I Environment Site Assessment Process," treat floodplains and wetlands as "non-scope" considerations. Floodplains and wetlands are non-scope considerations because the focus of the ASTM Standards is on commercial real estate. The Executive Orders on floodplains and wetlands apply only to Federal agencies and do not apply to private parties.

2.6 Relationship to NEPA Documents

It is the intent of both E.O. 11988 and E.O. 11990 that Federal agencies implement the floodplain/wetlands requirements through existing procedures such as those established to implement NEPA. As previously noted, the floodplains/wetlands assessment required under DOE regulations at 10 CFR 1022.12 should be prepared with and included in an EA or EIS if either document is required (see Chapter 13). The Statement of Findings for a real property transfer involving a floodplain should be combined with the appropriate NEPA document.

2.7 Leases, Other Outgrants, and Disposals

Executive Orders 11988 § 3(d) and 11990 § 4 contain explicit provisions protecting floodplains and wetlands, respectively, in real property transfers. These provisions mandate that Federal agencies shall:

- (1) Reference in the conveyance (lease, deed, etc.) those uses that are restricted under identified Federal, State, or local floodplain/wetland regulations; and
- (2) Attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or
- (3) Withhold such properties from conveyance.

The restrictions in (1) and (2) above should also be included in an attachment to Standard Form 118.

2.8 Notice of Intention to Relinquish

If the subject real property is withdrawn land being declared excess, include the following information in the Notice of Intention to Relinquish (see § 1.6.2) to be submitted to the BLM:

- Data on floodplains/wetlands
- Changes or disturbances to floodplains/wetlands

- Terms and conditions necessary to be incorporated in any further disposition of the land to protect floodplains/wetlands in the public interest

2.9 GSA-Specific Requirements

GSA requires completion of a Standard Form 118 for the transfer of the real property being declared excess. Information regarding floodplains and wetlands and restrictions on disturbances, improvements, or other uses must be included as an attachment to the form.

2.10 Checklist

- ☐ Has a determination as described in § 2.4.1 been made as to whether the real property lies within or contains any wetlands or floodplains? (If there are no floodplains/wetlands involved, stop here.)
- ☐ Have considerations (such as not transferring the real property, excluding the floodplain/wetland from the transfer, or imposing restrictions on use of the floodplain/wetland) to protect and preserve the floodplain/wetland been made?
- ☐ Has an assessment for the floodplain/wetland been prepared as described in § 2.4.2?
- ☐ Have the required public notice and public comment/review procedures been implemented?
- ☐ If an EA or EIS is not prepared and the property being transferred involves a floodplain for which a floodplain determination and assessment have been completed, has a Statement of Findings been published?
- ☐ Have data on floodplains/wetlands been included in the environmental site assessment or environmental baseline survey?
- ☐ Have the floodplains/wetlands determinations, assessments, and Statements of Findings been included in the EA or EIS (if one is prepared)?
- ☐ If the real property is offered for an outgrant of an easement, lease, license, or permit (see glossary), have the floodplains/wetlands been identified, appropriate restrictions been incorporated, and the responsibility for obtaining the necessary permits been specified in the conveyance?
- ☐ If the real property being declared excess is withdrawn land, have data on floodplains/wetlands, any changes or disturbances to floodplains/wetlands, and any terms and conditions deemed necessary to be incorporated in any further disposition of the land to protect the public interest in floodplains/wetlands been included in the Notice of Intention to Relinquish submitted to the BLM?
- ☐ If the real property is being declared excess, have data on floodplains/wetlands been included in the SF 118?

2.11 References

- ASTM, 1994. "Standard Practice For Environmental Site Assessments: Phase I Environmental Site Assessment Process," American Society for Testing and Materials Standard E-1527-94, June 1994.
- ASTM, 1993. "Standard Practice for Environmental Site Assessments: Transaction Screen Process," American Society for Testing and Materials Standard E-1528-93, May 1993.
- FEMA, 1986. *Unified National Program for Floodplain Management*, Federal Emergency Management Agency, Interagency Task Force on Floodplain Management, March 1986.
- U.S. Army Corps of Engineers, 1987. *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1*, January 1987.

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